

Tentative Rulings for December 1, 2011

Department 2G

**To request oral argument, you must notify Barbara Berg at
(760) 904-5722 and inform all other counsel no later than 4:00 p.m.**

1.

INC 071747	Johnson v. WVB Investments, LLC	Motion for Leave to File First Amended Cross-complaint by Stephen Payne, Linda Payne
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Tentative Ruling: Deny. The party seeking to amend has been dilatory (Hirsa v. Superior Court (Vickers) (1981) 118 Cal. App. 3d 486, 490). The claim by counsel that in reviewing the First Amended Cross-complaint for trial it was realized that allegations should be clarified is disingenuous. The same counsel has represented this party since 2009. Failure to seek leave to amend sooner is an unreasonable delay. Any increase in discovery would be prejudicial to opposing parties.

2.

INC 1103435	Bergman v. Fortner	Motion to Reconsider or, in the Alternative, Vacate the October 11, 2011 Order by Janet Bergman
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Tentative Ruling: Continue to December 15, 2011.

3.

INC 1103435	Bergman v. Fortner	Motion to Enforce Settlement Agreement by Brian Fortner
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Tentative Ruling: See #2.

4.

INC 1103503	Wire v. Intercity Plumbing	Demurrer to First Amended Complaint by American Home Shield of California, Inc.
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Tentative Ruling: Sustain. Thirty days' leave to amend.

American did not breach either a contractual or legal duty owed to plaintiff.

5.

INC 1103503	Wire v. Intercity Plumbing	Demurrer to First Amended Complaint by James Douglass Barrett, J. K. Barrett, Inc.
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Tentative Ruling: Sustain. Thirty days' leave to amend.

Plaintiff has failed to plead the underlying fraud with specificity (Weil & Brown ¶ 6:139; Lazar v. Superior Court (Rykoff Sexton Inc.) (1996) 12 Cal. 4th 631, 645). Further,

plaintiff has not alleged Ryder's authority to speak for Barrett (Weil & Brown ¶ 6:145; Tarmann v. State Farm Mutual Auto Insurance Co. (1991) 2 Cal. App 4th 153, 157).

6.

INC 1107144	City of Palm Desert v. Moers	Hearing Re: Appointment of Receiver
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Tentative Ruling: Grant. No opposition.

7.

INC 055339	Union Pacific Railroad v. SFPP, LP	Hearing Re: Status Conference
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Tentative Ruling: Continue to December 8, 2011.